



DEPARTMENT OF JUSTICE

**Notice of Lodging of Proposed Consent Decree under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)**

On January 20, 2022, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the District of New Mexico in the multidistrict litigation entitled *In re: Gold King Mine Release in San Juan County, Colorado on August 5, 2015*, MDL no. 1:18-md-02824-WJ. The proposed Consent Decree pertains to certain claims alleged in the following actions that have been centralized in the multidistrict litigation: No. 16-cv-465-WJ/LF; No. 16-cv-931-WJ/LF; No. 18-cv-319-WJ; No. 18-cv-744-WJ.

The proposed Consent Decree resolves claims brought by the United States against Sunnyside Gold Corporation (“SGC”) and Kinross Gold Corporation (“KGC”) under Sections 107(a) and 113(g)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (“CERCLA”), 42 U.S.C. 9607(a) and 9613(g)(2), and seeking reimbursement of, or contribution towards, response costs incurred or to be incurred for response actions taken or to be taken by the United States in connection with the release or threatened release of hazardous substances at the Bonita Peak Mining District Superfund Site located in San Juan County, Colorado (“BPMD Site”). The BPMD Site was placed on the National Priorities List on September 9, 2016. *See* 81 FR 62397, 62401 (Sept. 9, 2016). The United States alleged that SGC is liable under CERCLA as a current owner at the Site and as a past owner and operator at the time of a disposal of a hazardous substance at the Site, and that KGC is liable as the successor to Echo Bay Mines, Ltd., a past operator at the time of a disposal of a hazardous substance at the Site.

The proposed Consent Decree also resolves claims brought by SGC against the United States under CERCLA for recovery of response costs and contribution, and a claim for contribution and indemnity in connection with the BPMD Site. SGC alleged that the United States is liable under CERCLA as a current owner at the Site, as a previous owner at the Site at

the time of disposal of hazardous substances, and as an operator and arranger at the Site, in part as a result of the U.S. Environmental Protection Agency's ("EPA's") response actions at the Gold King Mine. In addition, the proposed Consent Decree resolves the State of Colorado's potential claims against SGC and KGC under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for reimbursement of response costs incurred or to be incurred for response actions taken or to be taken by the State in connection with the release or threatened release of hazardous substances at the BPMD Site.

The proposed Consent Decree requires SGC and KGC to pay \$45 million to the United States and the State of Colorado for response costs in connection with the BPMD Site, and requires the United States to pay \$45 million to appropriate federal accounts for response costs. The proposed Consent Decree provides SGC and KGC and certain related parties (including Echo Bay, Inc., Kinross Gold USA, White Pine Gold Corporation, Echo Bay Management Corporation, and Echo Bay Exploration Inc.) with contribution protection under CERCLA and with covenants not to sue or take administrative action with regard to the Site under Sections 106, 107(a), and 113 of CERCLA; Sections 3008 and 7003 of the Resource Conservation and Recovery Act ("RCRA"); Sections 309 and 311 of the Clean Water Act; and certain Colorado statutory provisions. The proposed Consent Decree further terminates administrative orders issued to SGC related to Site access and investigation. Under the proposed consent decree, EPA, U.S. Department of the Interior, and U.S. Department of Agriculture receive contribution protection and covenants not to sue with regard to the BPMD Site under Sections 106 and 107(a) of CERCLA and certain Colorado statutory provisions.

The proposed Consent Decree does not resolve all claims in the multidistrict litigation. For instance, it does not address claims brought by the State of New Mexico, Navajo Nation, or individual plaintiffs against the EPA related to the Gold King Mine.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General,

Environment and Natural Resources Division, and should refer to *In re: Gold King Mine Release in San Juan County, Colorado on August 5, 2015*, D.J. Ref. No. 90-11-3-11676 and No. 90-11-6-20816. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by e-mail or by mail:

<i>To submit comments:</i>	<i>Send them to:</i>
By e-mail	pubcomment-ees.enrd@usdoj.gov
By mail	Assistant Attorney General U.S. DOJ – ENRD P.O. Box 7611 Washington, D.C. 20044-7611

Under section 7003(d) of RCRA, a commenter may request an opportunity for a public meeting in the affected area.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department website: <https://www.justice.gov/enrd/consent-decrees>. We will provide a paper copy of the proposed Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to:

Consent Decree Library  
U.S. DOJ – ENRD  
P.O. Box 7611  
Washington, D.C. 20044-7611

Please enclose a check or money order for \$11.25 (25 cents per page reproduction cost) payable to the United States Treasury.

**Jeffrey Sands,**

*Assistant Section Chief,*

*Environmental Enforcement Section,*

*Environment and Natural Resources Division.*

